S.B. Civil Writ Petition No.4290/2004

The New India Assurance Company Ltd.
vs.
Smt. Kamla and others.

Date : 16.11.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Jagdish Vyas, for the petitioner.
Mr. Rajesh Panwar, for the respondents/claimants.
Mr. Vijay Bishnoi, for the respondent/owner.

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All the learned counsels submit that this writ petition itself may be decided in view of the fact that Motor Accident Claims Tribunal, Nohar camp Bhadra in Accident Claim Case No.35/2003 (13/2002) dismissed the petitioner – insurance company's application under Section 170 of the Motor Vehicles Act, 1988 and according to learned counsel for the respondents/claimants, the claimants' claim petition cannot be decided in view of the interim order passed by this Court which has already been confirmed and in regular course, writ petition may take time for hearing. It is submitted by learned counsel for the claimants that the point involved in this case is very short and the learned counsel for the petitioner also requested that the point involved is so short that the writ petition may itself be heard finally at orders stage.

Heard learned counsel for the parties finally.

It appears from the facts of the case that according to the petitioner insurance company, the claim petition has been filed collusively by the claimants with the collusion with the owner of the vehicle and substituted the name of the real driver with the name of the son of the owner of the vehicle whereas in fact, the driver of the vehicle was other person and they wanted to prove this fact and in view of the collusion between the claimants and owner of the vehicle, that fact can only be proved by the petitioner insurance company and for that purpose, unless leave is granted under Section 170 of the Motor Vehicles Act, they will not be able to defend the claim petition.

Learned counsel for the claimants vehemently submitted that all the allegations leveled against the claimants are absolutely false, frivolous and to avoid the liability of the insurance company.

Learned counsel for the owner of the vehicle also submitted that there is no question of any collusion between the claimants and the owner of the vehicle.

In view of the stand taken by the parties, it is clear that the fact of collusion can be proved by the insurance company which they want to prove to save their and public money and, therefore, in that situation, the Tribunal should have taken a liberal approach and opportunity should

have been granted to contest the claim petition on all counts by giving permission under Section 170 of the Motor Vehicles Act. It is different thing whether the allegation leveled by the petitioner insurance company is correct or not but atleast they deserve an opportunity to prove this fact which has material bearing on the controversy in hand.

In view of the above, this writ petition is allowed, the impugned order dated 4.8.2004 is set aside and the application filed by the petitioner insurance company under Section 170 of the Motor Vehicles Act is allowed.

At this stage, learned counsel for the claimants pointed out that this Court ordered the Tribunal to proceed with the trial and restrained the Tribunal from passing any final award, thereafter the petitioner submitted an application seeking permission to lead evidence and that was allowed and according to learned counsel for the petitioner, the petitioner was permitted to lead evidence by the Tribunal, however, he is not sure whether any further evidence will be needed or in view of the subsequent order passed by the Tribunal itself, the insurance company has already led evidence.

Be it as it may be, the fact remains that the order dated 4.8.2004 cannot be sustained in the light of the facts mentioned above.

The Tribunal may now proceed treating that the petitioner has been granted permission under Section 170 of

the Motor Vehicles Act and the Tribunal may decide the claim petition expeditiously as early as possible.

(PRAKASH TATIA), J.

S.Phophaliya